

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**ROBERT WADE PLUMIER, as Son and
Personal Representative of the Wrongful Death
Beneficiaries of ROBERT WAYNE PLUMIER,
Deceased, and Estate of Robert Wayne Plumier,
Deceased**

PLAINTIFFS

v.

CIVIL ACTION NO. 1:18CV13-HSO-JCG

MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL.

DEFENDANTS

**MOTION TO DISMISS BASED ON ELEVENTH AMENDMENT IMMUNITY, STATE
LAW IMMUNITY AND QUALIFIED IMMUNITY**

COME NOW, Defendants, Mississippi Department of Corrections (“MDOC”), South Mississippi Correctional Institution (“SMCI”), Jacquelyn Banks, in her individual and official capacity, Marshall Turner, in his individual and official capacity, and Brenda Sims, in her individual and official capacity, and submit for filing and the Court’s consideration, this their Motion to Dismiss Based on Eleventh Amendment Immunity, State Law Immunity and Qualified Immunity, and in support thereof, would show unto the Court as follows:

1. Plaintiffs’ First Amended Complaint alleges, pursuant to 42 U.S.C. §1983, that Robert Wayne Plumier, a post-conviction inmate in the custody of the Mississippi Department of Corrections, was denied medical care while housed at the South Mississippi Correctional Institution in Leakesville, Greene County, Mississippi in violation of the Eighth and Fourteenth Amendments to the United States Constitution [4]. Plaintiffs allege that this violation of Mr. Plumier’s constitutional rights resulted in his death after his release from prison [4]. Plaintiffs also allege a civil conspiracy to violate Robert Wayne Plumier’s civil rights under 42 U.S.C. § 1985 and a failure to prevent the conspiracy under 42 U.S.C. §1986. [4 at Count III]. Finally, Plaintiffs’ First Amended

Complaint also makes reference to violations of unspecified state law. [4 at ¶¶9, 12]. Plaintiffs seek monetary damages, attorneys' fees and court costs. [4 at 16].

2. As set forth more fully in Defendants' Memorandum in Support, these Defendants are entitled to Eleventh Amendment immunity, state law immunity and qualified immunity and dismissal from this suit.

WHEREFORE, PREMISES CONSIDERED, Defendants, MDOC, SMCI, Jacquelyn Banks, Marshall Turner and Brenda Sims, respectfully request that the Court grant their Motion to Dismiss and enter an order dismissing all claims against them with prejudice. Defendants pray for such other general relief that the Court deems appropriate.

Respectfully submitted this the 22nd day of February, 2018.

**MDOC, SMCI, JACQUELYN BANKS,
MARSHALL TURNER AND BRENDA SIMS,
DEFENDANTS**

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

TOMMY D. GOODWIN
SPECIAL ASSISTANT ATTORNEY GENERAL
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BY: s/Tommy D. Goodwin
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CERTIFICATE OF SERVICE

I, Tommy D. Goodwin, Special Assistant Attorney General of the State of Mississippi, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system which served a copy on all counsel of record.

This, the 22nd day of February, 2018.

s/Tommy D. Goodwin

Tommy D. Goodwin